

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 3 OF 2002

Benjamin Pereira
resident of Mushir,
Colvale, Bardez, Goa.

.... Appellant

V e r s u s

Comunidade of Colvale
having its office at Colvale,
represented by its present
Special Attorney, Shri Manuel
V. Paul, major of age, married,
resident of House No.190,
Bella Vista Vaddo, Sircaim,
Tivim, Bardez, Goa.

.... Respondent

Shri R. Satardekar, Advocate for the Appellant.

Shri S. S. Kantak, Advocate for the Respondent.

CORAM: **A. P. LAVANDE &
N.A. BRITTO, JJ.**

DATE : **25.04.2005.**

JUDGMENT(Per N.A. BRITTO, J.)

Heard Shri Satardekar on behalf of the appellant and Shri
Kantak on behalf of the respondent.

2. By Notification dated 16.08.1994, issued under Section 4(1) of

the Land Acquisition Act, 1894, published on Gazette dated 16.08.1994, land was acquired for the purpose of setting up of an Industrial Estate at Colvale and, in the said acquisition, an area of 1,09,090 square metres and 525 square metres were acquired from survey nos. 220/1 and 218/3 respectively. There was a dispute as regards payment of the said compensation between the appellant and the respondent which was referred to the learned District Judge, Panaji. The said dispute arose on account of the claim of tenancy put forward by the appellant. By Award dated 30.04.2001, in LAC no. 111/95, the learned Additional District Judge has ordered the entire compensation in respect of survey no.218/3 to be paid to the Comunidade while the entire compensation in respect of survey no. 220/1 to be paid to the appellant. This appeal has been filed by the appellant against that part of the Award by which the compensation in respect of survey no. 218/3 has been ordered to be paid to the Comunidade.

3. The contention of the appellant who claims to be a tenant of the Comunidade is that since the claim of tenancy put forward by the appellant was disputed, the reference could not have been decided by the learned Additional District Judge without deciding the issue of tenancy.

Shri Kantak, the learned Advocate of the respondent fairly concedes that in the light of plea taken by the appellant that he was a tenant in respect of survey no. 218/3, the plea of tenancy ought to have been referred to the Mamlatdar and depending upon the decision of the Mamlatdar, the reference ought to have been decided.

4. In the light of the above, the appeal deserves to succeed and the impugned Judgment/Award dated 30.04.2001, to the extent that it directs the payment of compensation to the Comunidade in respect of the area acquired from survey no. 218/3 deserves to be set aside. The learned reference Court (Addl. District Judge) is, therefore, hereby directed to make a reference to the Mamlatdar whether the appellant is a tenant of the Comunidade in respect of survey no. 218/3 of Colvale, belonging to the respondent and only after the decision of the Mamlatdar, dispose of the reference in accordance with law.

A. P. LAVANDE,J.

N.A.BRITTO,J.

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